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The Conviction of Lentulus

Many men have from time to time found the motives and conduct of Cicero in the affair of the Catilinarian conspiracy seriously questionable. Mommsen breaks out into an invective against him for denying the condemned men their right of appeal. This submission of their case to a less prejudiced tribunal, which Lentulus and his associates failed to obtain some two thousand years ago, has been offered repeatedly by a remoter Court of Cassation than any of them contemplated; especially in an age of which the favorite exercise is the rehabilitation of the step-children of History.

It may not be without interest to review the evidence against Lentulus, Cethegus, and the rest, from the point of view of modern methods and, more particularly, of modern American methods.

Lentulus, Cethegus, Statilius, Gabinius and Caeparius were executed in December 63 B C, by "being hanged by the neck until they were dead," without even a recommendation to supra-mundane mercy, upon conviction for a crime, which would to-day be called high-treason. Leaving out of the question whether the authority that sentenced them was within its legal limits, we shall confine ourselves to an examination of those manifold *argumenta atque indicia* which in Cicero's belief placed their guilt beyond a reasonable doubt, and which are for the most part contained in his third oration against Catiline, IV and V.

What were these *argumenta*? Summarized, they were, first: the testimony of one Titus Volturcius of Crotona, a recent, but seemingly not very valuable acquisition of the alleged conspiracy, and the testimony of envoys of the Gallic tribe of Allobroges, who were in much the same position as Volturcius; sec-

ond, certain documents (*tabellae*) in the form of three letters to the State of the Allobroges, signed and sealed by Lentulus, Cethegus and Statilius, and one other letter, unsigned and unaddressed, stated by its bearer, Volturcius, to be from Lentulus and to be directed to Catiline.

These proofs were regarded as establishing the treasonable inciting of a vassal people and of a man declared a public enemy, to make war upon the state; and further as establishing, on the part of the accused, designs of violent insurrection within the city of Rome itself.

Of the two classes of evidential facts before us, those that generally and properly carry the most weight are the documents. The letter to Catiline claimed to be sent by Lentulus we have from two sources, Cicero, *Cat.* III v 12, and Sallust *Cat.* XLIV 5. It is worth quoting in the form given by Cicero.

"Quis sim, scies ex eo quem ad te misi. Cura ut vir sis, et cogita quem in locum sis progressus. Vide ecquid tibi iam sit necesse, et cura ut omnium tibi auxilia adiungas, etiam infimorum."

Sallust's version is identical in substance but shows considerable difference in expression. It may be nothing but a paraphrase of Cicero.

But Cicero himself probably does not give the exact words, for, if that were known to be a fact, Sallust would undoubtedly have reproduced them. At any rate, taking the letter as we find it in Cicero, we are struck by the vagueness of its terms and by the total absence of incriminating elements. Even admitting that its authorship was brought home to Lentulus, and that his unwillingness to sign it is a suspicious circumstance, we have nothing to predicate a charge of treason upon. It is sufficiently intelligible that in communicating with Catiline, Lentulus will hardly sign his name, even though (as is likely) Catiline had not formally been declared *hostis rei publicae*. The recommendation to accept the aid of the *infimi*, evidently slaves, has no neces-

sary criminal implication in the mouth of a political lieutenant writing to his chief.

Of the other letters, we know only the general contents of Cethegus's letter. Cicero states: "*Erat scriptum ipsius manu Allobrogum senatui et populo, sese quae eorum legatis confirmasset facturum esse; orare ut item illi facerent quae sibi eorum legati receperissent.*" The other two were in *eandem fere sententiam*, and *eadem ratione*. Sallust (*Cat.* XLIV 1) seems to know only of a sealed "*ius iurandum*" procured from the three men by the Allobroges at the instigation of Cicero, and, as a matter of fact, Cicero's own words show little more than such a *ius iurandum*, an interchange of pledges.

Unexplained, the letters are meaningless, and as their existence demands an explanation it remains to be seen whether an interpretation is possible other than the criminal one proffered by the Allobroges,—and such a one is ready at hand. We have only to remember that the envoys were in Rome to secure certain political rights for their compatriots and that Catiline and his friends were representatives of an eclipsed and discredited but rising faction, and we have a by no means improbable account of the negotiations that preceded these letters. That the transactions were secret, might be due to the fact that the political service promised was the fairly common and modern one of legislative corruption. This is purely conjectural to be sure, but at least it raises a reasonable doubt.

The documentary evidence resolves itself accordingly into four letters, none of which in itself makes any mention of criminal action or intent, and all of which can be explained in a manner perfectly consistent with the absolute innocence of the accused.

The most solid basis of the prosecution, therefore, gives at best a slippery foothold.

Then we have oral testimony. First, that of Volturcius. Before investigating his statements it might be well to discover what man-

ner of man this is, on whose oath the lives of five men are to depend. This Volturcius, a provincial, recently brought into acquaintance with Lentulus by Gabinius Cimber, professed in the first place to know nothing more of the conspiracy than the Gauls, and to have heard only that several famous men were associated with the conspirators (*Sallust Cat.* XLVII 1). Taking him at his word,—and such an arrant poltroon is not likely to have been the confidant of men whom Cicero is fond of calling *audacissimi*—his testimony can be heard only as to his actual employment by Lentulus.

Then the circumstances under which he testified were not the most favorable for eliciting the truth. At the ambushade near the Mulvian Bridge his conduct is reported by Sallust as follows: "*Volturcius primo — se defendit, deinde, ubi a legatis desertus est, multa prius de salute sua Pomptinum obtestatus, postremo timidus ac vitae diffidens sese dedit.*" It does not appear that even while heroically defending himself he ran any serious bodily risk, but it is quite evident that *salus sua* was at all times the object of his most lively concern. Cicero likewise informs us that he spoke *cum vix se ex magno timore recreasset*, a mental condition not conducive to clear expression.

And this man in a state of extreme terror, with immunity and reward promised for his testimony, states,—that besides a letter Lentulus gave a verbal message to Catiline to the effect that he should accept the aid of the slaves, hasten to the city with his army as soon as possible, and, Cicero goes on, *id autem eo consilio ut cum urbem incendissent caedemque fecissent praesto esset ille qui fugientes exciperet*, etc. Even Cicero's statement here is ambiguous. It is not clear whether the *consilium* is the reason assigned by Cicero, or by Volturcius, or according to Volturcius, by Lentulus himself. In all events, it is absurd to suppose that if Lentulus and Catiline had the designs imputed, that it would be nec-

essary to inform Catiline why his accomplices desired his assistance. If Volturcius really said that, his statement is a palpable fiction from the start. But assuming that the verbal instructions he claimed to have received contained only the first two injunctions, we have Lentulus taking a practically unknown man, giving him a letter in which he uses the utmost caution of expression, which he does not sign, and which refers to the bearer only to enable Catiline to learn whence the letter came, and then incontinently proceeding to destroy the results of his prudence by confiding orally in detail to the messenger all that he barely hinted at in the letter. A story like this can hardly hold water without the assumption of inconceivable stupidity on the part of Lentulus, of which fact Cicero himself seems to be conscious later on (*Cat.* III VII 17). It is not impossible, we must remember, that Cicero is interweaving into the simple statement of the witness that Lentulus gave him this letter for Catiline, his own conclusions from the letter and his interpretation of its contents. It ought never be forgotten that our record is not a stenographic minute of proceedings, but a popular oration, edited for publication a considerable time after its delivery.

And then we have these precious scamps, the Allobrogian "stool-pigeons." These gentlemen after a few interviews with go-betweens consult with their patronus, D Fabius Sanga, and are by him referred to Cicero. Cicero sends them back for more convincing proof. They return with the utterly inconclusive letters discussed before, which only establish that they were actually under negotiations with these men. Rejecting the letters as we must, we have only the unsupported testimony of the Gauls, which Cicero himself did not regard worthy of credence but which, with the statements of Volturcius, forms the whole case against Lentulus and his associates.

This testimony is: Cethegus, Statilius and Lentulus gave them letters to their people.

The three men mentioned and L Cassius stated that the Gauls should send cavalry into Italy since there would be no lack of foot-soldiers. Finally Lentulus assured them that by the Sibylline books he was the destined successor of Sulla and Cinna and that this was the year fated for his assumption of power. The second charge here is the only serious one. Yet when Lentulus crossexamines them, and asks what his intercourse with them had ever been, they indignantly bring forward in reply, not the second and serious charge, but the third one, which Lentulus readily admits. In other words, the only communication which they are really certain Lentulus made to them was some rodomontade about the prophetic glories of his race. If this was meant by Cicero to have any weight, he must have temporarily forgotten that in his account Lentulus is only a "humble and inferior associate" of the arch-fiend Catiline and that the latter would be effectively cleared if Lentulus is to be regarded as the head of the conspiracy. But it is out of the question to take this mouth-ing seriously.

The oral testimony then, breaks down as hopelessly as the documentary. A thoroughly cowed messenger tells a wholly improbable story, under circumstances which give him every motive to lie. Some Allobrogian envoys maintain that Lentulus claimed a divine right to rule Rome.

We can afford to neglect the fact that swords and daggers were found in the house of Cethegus, a fact for which the latter gives a perfectly plausible and adequate explanation, (*Cat.* III, v 10). We can similarly afford to neglect the proofs, "much more certain" even than the "*certissima argumenta*" just reviewed, the "*color, oculi, vultus, taciturnitas*." The preposterous value Cicero claims for these feeblest of evidences, can be due only to his uneasy consciousness that his whole edifice was built on shifting sands.

Finally, if all Cicero's proofs had immeasurably more cogency and force than can pos-

sibly be granted them, the distorted and biased form in which they are presented would immediately cast doubt upon them. He quibbles throughout. The word *confessus* is used first to denote an admission of a specific statement, and directly thereafter in the technical sense of a confession of guilt. In one case at least he involves himself in a dangerous approach to prevarication. When the anonymous letter was brought forward, Lentulus, says Cicero, *vehementissime perturbatus tamen et signum et manum suam cognovit*. But if the *signum* and *manus* were recognizable, what could Lentulus possibly have hoped to gain by refusing to put his name to the letter? These are only several examples among many in which Cicero by adroit manipulation of expressions, or by actual falsehood, brings about the general impression that the five men were actually "*manifesti* and *confessi*", neither of which is the case.

Only Lentulus, Cethegus and Statilius were accused of direct complicity. Gabinius and Caeparius suffered seemingly as accessories without even an attempt at proof beyond Cicero's vague "*indicatum est*" and a vituperative epithet. The other men proscribed by the senate, Chilo, Umbrenus, Annius, and Cassius escaped for the same reason that renders the Nuerembergers averse to capital punishment.

We are not concerned at present with Cicero's motives. Examining the testimony not by arbitrary rules of a special Law of Evidence, but by those modern methods the reasonable basis of which makes them more generally applicable, we can not fail to come to the conclusion that the prosecution had woefully failed to make out its case against the five men condemned and executed. Cicero may have been thoroughly convinced of their guilt and proceeded on the assumption "any stick is good enough to beat a dog with"; but in this case the stick was exceedingly bad, and the dog must have been a mangy cur indeed to have deserved it.

MAX RADIN
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PROSPECTUS FOR 1904-1905

TO WHOM IT MAY CONCERN:—

An editorial committee of Latin teachers from the High Schools in New York City will begin on Oct 1, 1904, the publication of the *fifth volume* of THE NEW YORK LATIN LEAFLET, a small four-page weekly sheet devoted primarily to the discussion of Latin or Greek topics touching the secondary field of Latin and Greek instruction. Latin will naturally continue to be the predominant feature. On the editorial committee and among the contributors are now representatives from seven of the New York High Schools, from The Normal College, The College of the City of New York, The Brooklyn Latin School, The Brooklyn Polytechnic Institute, Newark Academy, The Hotchkiss School, The Teachers' College, Packer Collegiate Institute, Adelphi College, The New York University, and Columbia University. Other local institutions will be represented as the work of organization goes on. This arrangement not only makes the editorial quotient small, but insures that the matter for publication will be of a reasonably high order; and, while an effort will be made to keep closely to the practical, no bar will be placed to contributions from any source bearing on the classics which the narrow limits of the publication will admit. The size of the little publication is indicated by this prospectus. To secure effectiveness, it will appear weekly during 25 weeks of the school year.

Owing to the extremely narrow constituency which such a technical publication as this naturally commands, the editorial committee has seen fit to give the paper a practical goal, such as the establishment of a High School College Entrance Scholarship Fund, to which every penny over and above the expenses of the publication will be devoted. It has been thought wisest to place all the money secured, at the end of each year, in the hands of Trustees. Consequently, Mr Arthur S Somers, Ex-Commissioner of Education, Dr Nicholas Murray Butler of the College Entrance Examination Board, Dr. John H. Finley, President of the College of the City of New York and Mr. Frederick D. Mollenhauer of the Mollenhauer Sugar refinery have kindly consented to take charge of this fund in trust, and the money so far paid in is now in their hands.

To pay the expenses of publication, three columns will be open to advertising, and already assurances have been given for enough high class advertisements to vouchsafe for all expenses for another year in advance. Thus the financial part of the undertaking has been made as solid as a rock*. This leaves all money in the shape of subscriptions to the paper sacred to the Scholarship Fund. THE LATIN LEAFLET